

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In The Matter of

2016 Biennial Review of  
Telecommunications Regulations

WC Docket No. 16-132

**COMMENTS OF UNITED UTILITIES, INC.**

United Utilities, Inc. (“UUI”) hereby submits these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Public Notice seeking comments on its 2016 biennial review of telecommunications regulations.<sup>1</sup> The Commission should modify the method for calculating depreciation charges contained in Part 32 of the Commission’s rules<sup>2</sup> to bring the rule into conformity with generally accepted accounting principles (“GAAP”) as originally intended and to eliminate an unintended regulatory burden the current rule imposes on telecommunications companies. Specifically, the Commission should modify Section 32.2000(g)(2)(iii) to allow companies to calculate monthly depreciation charges by applying the annual depreciation rate to the monthly average balance as the rule currently requires or to their month-end balances, which the rule currently does not allow even though it is industry standard and permitted by GAAP.<sup>3</sup> Limiting the rule to the monthly average calculation method only

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<sup>1</sup> *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, FCC No. 16-149, CG Docket No. 16-124, EB Docket No. 16-120, IB Docket No. 16-131, ET Docket No. 16-127, PS Docket No. 16-128, WT Docket No. 16-138, WC Docket No. 16-132 (rel. Nov. 3, 2016).

<sup>2</sup> 47 C.F.R. § 32.2000.

<sup>3</sup> *Id.* § 32.2000(g)(2)(iii). The Wireline Competition Bureau has jurisdiction over the Part 32 rules.

does not serve the public interest because it is impractical, burdensome, and inconsistent with industry standards.

**I. THE COMMISSION MUST MODIFY ITS PART 32 DEPRECIATION CHARGES RULE AS PART OF ITS BIENNIAL REVIEW BECAUSE IT IS NOT NEEDED TO FURTHER THE PUBLIC INTEREST.**

The Commission is required to review biennially its regulations “that apply to the operations or activities of any provider of telecommunications service” to determine whether such regulations are no longer necessary in the public interest “as the result of meaningful economic competition between providers of such service.”<sup>4</sup> In conducting its biennial review, the Commission reevaluates regulations “in light of the current competitive market conditions to see that the conclusion it reached in adopting the rule—that the rule was needed to further the public interest—remains valid.”<sup>5</sup> The Commission shall repeal or modify any regulation that it finds is no longer necessary in the public interest.<sup>6</sup>

Section 32.2000(g)(2)(iii) of the Commission’s rules is contrary to the public interest in its current form because it is inconsistent with GAAP, which the Commission originally intended the rules to embody. In the rulemaking that established Part 32’s Uniform System of Accounts for Telephone Companies (“USOA”) in the 1980s,<sup>7</sup> the Commission stressed its desire that

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<sup>4</sup> 47 U.S.C. § 161.

<sup>5</sup> *Cellco P’ship v. FCC*, 357 F.3d 88, 98 (D.C. Cir. 2004) (internal quotation marks and modifications omitted).

<sup>6</sup> 47 U.S.C. § 161(b).

<sup>7</sup> See *Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies*, CC Docket No. 78-196, 60 Rad. Reg. 2d (P&F) 1111 (FCC), 1986 WL 291915 (rel. May 15, 1986) (1986 Order).

“GAAP [] be incorporated to the maximum extent practicable,”<sup>8</sup> to “provide . . . regularized and normal accounting input to [the Commission’s] regulatory process.”<sup>9</sup> GAAP allows a company to use a consistent methodology to determine its depreciation charges, whether monthly average or month end. Thus, it is not necessary for the Commission’s depreciation charge rule to specify one methodology or the other as long as the company is consistent. Because Section 32.2000(g)(2)(iii) currently precludes the use of a depreciation calculation methodology that is otherwise permissible under GAAP and requires companies to use a methodology inconsistent with industry standards, it does not satisfy the *Cellco Partnership* standard.

**A. GAAP Allows Depreciation Charges to be Calculated Based on End-of-Month Balances or on An Average Monthly Balance.**

Section 32.2000(g)(2)(iii) of the Commission’s rules requires providers to calculate current monthly depreciation charges “by the application of one-twelfth of the annual depreciation rate to the monthly average balance of the associated category of plant,” which in turn “shall be computed using the balance as of the first and last days of the current month.”<sup>10</sup> In contrast, companies conforming to GAAP are permitted to use a consistent methodology other than the one required by Section 32.2000 to calculate monthly depreciation charges. A company adhering to GAAP could use a methodology based on a monthly average or based on an end-of-month balance. Indeed, some accounting systems cannot be configured to calculate a monthly average consistent with Section 32.2000(g)(2)(iii) and, therefore, flexibility is permitted under GAAP.

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<sup>8</sup> *Revision of the Uniform System of Accounts and Financial Reporting Requirements for Telephone Companies*, CC Docket No. 78-196, 88 FCC 2d 83, 1981 WL 158703 ¶ 25 (rel. Oct. 20, 1981) (*1981 Order*).

<sup>9</sup> *Id.* ¶ 11.

<sup>10</sup> *1986 Order* app. A at 69.

**B. The Strict Average Monthly Balance Requirement Creates an Unintended Regulatory Burden.**

Because Section 32.2000(g)(2)(iii) imposes a less flexible accounting methodology than required by GAAP, complying with the Commission's rules imposes an additional burden on telecommunications companies beyond their ordinary accounting obligations. And because some systems cannot calculate depreciation costs in the way the rule requires, they may be technically unable to comply with the Commission's rules despite the fact that they follow industry standard accounting practices that satisfy their other obligations. This is not the result the Commission intended. And because the rule is inconsistent with the Commission's intent, it cannot be in the public interest for it to remain unmodified.

In crafting Part 32 accounting requirements, the Commission "believed that the [USOA] system should not be unduly burdensome by collecting more information than is needed[.]"<sup>11</sup> And the Commission intended to depart from GAAP "only when the requirements of the regulatory process under the Communications Act, particularly with respect to ratemaking, mandated additional or different accounting."<sup>12</sup> Since there is no regulatory need to establish a specific monthly depreciation costs methodology to adhere to GAAP, current Section 32.2000(g)(2)(iii) creates the type of undue burden the Commission sought to avoid.

The Commission also did not intend to subject companies to new accounting obligations beyond what their existing duties required. GAAP "directly satisfy the user needs of owners/investors, lenders, and certain governmental entities as well," and that adherence to

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<sup>11</sup> *Id.* ¶ 2.

<sup>12</sup> *Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies*, CC Docket No. 78-196, 100 FCC 2d 480, 1985 WL 260089 ¶ 11 (rel. Jan. 3, 1985).

GAAP “satisf[ies] the fiduciary reporting responsibility of management[.]”<sup>13</sup> Since the Commission “perceive[d] the new USOA as a financial accounting system which will meet the financial and primary fiduciary reporting needs of the telephone industry,”<sup>14</sup> there is no public interest justification for exposing telecommunications companies to a set of regulatory obligations that are inconsistent with GAAP.

*Cellco Partnership* requires the Commission to ensure that there is still a match between a regulation and its public interest justification.<sup>15</sup> Assuming the conclusions the Commission reached in originally enacting Part 32 “remain[] valid,”<sup>16</sup> the Commission must modify Section 32.2000(g)(2)(iii), insofar as it requires companies to calculate depreciation charges by any specific mechanism, thereby departing from GAAP.

## **II. THE COMMISSION SHOULD MODIFY ITS DEPRECIATION CHARGES RULE TO BRING IT IN LINE WITH THE COMMISSION’S ORIGINAL INTENT.**

The Commission can restore Part 32 to its intended purpose, and promote the public interest, with an easy modification to Section 32.2000(g)(2)(iii). Rather than requiring providers to apply the depreciation rate to “the balance as of the first and last days of the current month,”<sup>17</sup> it can simply require that providers use a consistent methodology to calculate the average monthly balance. Specifically, the last sentence of Section 32.32000(g)(2)(iii) can state that “The average monthly balance shall be computed using a consistent methodology.” This change

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<sup>13</sup> *1981 Order* ¶ 19.

<sup>14</sup> *Id.* ¶ 21.

<sup>15</sup> 357 F.3d at 96.

<sup>16</sup> *Id.*

<sup>17</sup> 47 C.F.R. § 32.2000(g)(2)(iii).

is consistent with what GAAP allow and what companies are already doing. This change also will further all of the Commission's original objectives in enacting the USOA.

Modifying Section 32.2000(g)(2)(iii) so that it is consistent with the flexibility permitted by GAAP will result in reliable, standardized depreciation calculations. In UUI's experience, the differences between using a monthly average or a month's end methodology are *de minimis*. Moreover, the Commission was more concerned with establishing a uniform calculation methodology than with rigid adherence to a specific formula, especially when a more practical formula is equally reliable.<sup>18</sup> In fact, another Section 32.2000 subsection already allows monthly charges to be calculated "in total or in part through the use of other methods," "[i]n certain circumstances."<sup>19</sup> Thus, modifying the monthly depreciation cost formula would be consistent with the spirit of Part 32 as currently enacted, as well as with the Commission's original intent.

## CONCLUSION

Section 32.2000(g)(2)(iii) diverges from GAAP in a minor, yet significant way, by requiring telecommunications companies to use a specific, non-standard formula to calculate depreciation, with which some company systems do not have the capability to comply. The resulting regulatory burden subjects companies to two sets of accounting standards and potentially penalizes them for relying on accounting practices the Commission intended to endorse. Because such harmful and unintended consequences cannot be justified under the current competitive market conditions, the Commission should modify Part 32 to allow telecommunications companies to calculate depreciation costs using any consistent methodology, including the end-of-month balance rather than their monthly average balances.

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<sup>18</sup> 1981 Order ¶ 21 ("[I]t is more cost effective to have one accounting system serving multiple users than to have separate systems.").

<sup>19</sup> 47 C.F.R. § 32.2000(g)(2)(iv).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Bagg". The signature is fluid and cursive, with the first name "J." and the last name "Bagg" clearly distinguishable.

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December 5, 2016